1959

Darwin W. Larsen v. Wallene P. Larsen : Brief of Respondent

Utah Supreme Court

L. Delos Daines; Attorney for Respondent;

IN THE SUPREME COURT
OF THE STATE OF UTAH

DARWIN W. LARSEN,
Plaintiff and Appellant,
vs.
VALENE P. LARSEN,
Defendant and Respondent.

Case No.
8996

RESPONDENT'S BRIEF

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A R G U M E N T

ANSWER TO APPELLANT'S POINTS 1 AND 2

The Court found against the defendant up until the time the appellant returned home from his mission, which was in December, 1950, allowing judgment only from that date, thus we are concerned here only with the period subsequent thereto.

The defendant does not agree with the appellant that this Court held in its opinion that voluntary support by another relieves a father of his obligation to support the child and, in this regard, the Court will recall that it was because the Court did not so hold that

the appellant petitioned for a re-hearing, when this case was first before it. On pages 7 and 8 of appellant's petition for re-hearing, he said:

> "The opinion fails to consider appellant's point No. 2, which, shortly stated, concerns itself with defendant's second husband assuming and voluntarily supporting the child and fails to consider whether or not that is a good defense, as the proof is overwhelming and conclusive that he did support said child and whether voluntarily or involuntarily, no action lies with defendant to recover any alleged back support money.
>
> "The opinion as rendered leaves the question as to whether or not, when a third party voluntarily supports a child, that is a good or not good defense to any action brought by the mother for alleged back support money against father of child."

We call the Court's attention to the authorities that uniformly hold that voluntary care of a child by one other than the father does not relieve the father of his obligation.

THOMSEN v. THOMSEN, 82 N.Y.S. 2d 533.
CORBRIDGE v. CORBRIDGE (Ind.) 102 N.E. 2d 764.
ARMSTRONG vs. GREEN (Ala.) 68 S.E. 2d 434.

Notwithstanding the foregoing, we further call the Court's attention to the fact that the parties' child had been supported by the defendant's present husband, not voluntarily, but of necessity (R. 252-253).

Under Point 2, the appellant complains
iat the evidence does not support the Court's
indings that appellant received $30.00 a month
or a period of 30 months because of his
bligation to support his child and that he
ppropriated the same to his personal use. The
vidence that he did so is not even open to
ispute. He so testified himself. (R. 122-126,
39-141, 153-155, 162-165, 185)

The appellant's contention that he was
nder no obligation to use this money for the
upport of his child is untenable not only
egally, but morally as well. The money was
ppropriated by Congress for this purpose, and
o other. To support this claim, he refers to
ot only improperly admitted evidence, but to
vidence which on its face establishes that, had
he government known that the money was not being
sed for this purpose, it would have paid the
oney direct to the person supporting the child.
e quote from the letter appellant relies on:

"If, however, the Veterans Administration received from an actual custodian of a veteran's child to the effect that he is not contributing to its support, we can under certain circumstances apportion his schooling allowance and pay part of it directly to the

custodian of the child."

The fact that the defendant's present husband received $19.80 a month from June 29, 1954, to December, 1955, can have no bearing on this case, for such does not represent the cost of the maintenance of the child for this period, in fact, it only represents a small portion of the money required under present prices to care for her. In fact, had he not supported the child, she would have of necessity become a public charge, for her father did not and would not support her.

ANSWER TO APPELLANT'S POINT 3

The appellant's claim that respondent is not entitled to interest is without merit.

The law is clear that, as each installment payment of support under a decree of divorce becomes due, it becomes a judgment and the judgment creditor is entitled to interest from that date.

BUELL v. DUCHESNE MERCANTILE CO.
64 Utah 391, 231 P. 123.
COLE v. COLE, 101 Utah 355, 122 P. 2d 201.
OPENSHAW v. OPENSHAW, 105 Utah 574,
144 P. (2d) 528.

15-1-4, UCA, 1953

ANSWER TO APPELLANT'S POINT 4

The Court, in its decision, said that there could be no estoppel or waiver if the support money would inure to the benefit of the child. In this respect, the Court specifically found that it would inure to the benefit of the child because of the inadequacy of the $35.00 per month support money award, and the further fact that the child was in need of dental care which would and was costing approximately $1,000. The evidence was that such care would cost in excess of $1,000. (R. 257)

The Courts take judicial notice of the devaluation of the dollar, its loss of purchasing power, and that as an infant grows older, its needs increase. In this regard, we call the Court's attention to the fact that the minor child of the parties was only about two years old when the decree was entered divorcing the parties in 1946, and that since then, not only have the needs of the child increased, but the purchasing power of the dollar has decreased.

20 Am. Jur. p 127, Sec. 120
12 ALR (2d) 642
VAN CLEAVE v. LYNCH, 166 P. (2d) 244, Utah.

ANSWER TO POINTS 5 AND 6

Appellant's Points 5 and 6 are directed to the conclusion of law by which the Court directed its judgment in the sum of $2,725.36, and needs no comment, as the judgment should stand if the Court sustains the findings complained of.

C O N C L U S I O N

In conclusion, the respondent maintains that the evidence supports the findings of the Court, and that the findings support the judgment, and that the judgment of the lower Court should be sustained.

Respectfully submitted.

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